



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-011]

Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) published the *Preliminary Determination* of the countervailing duty (CVD) investigation of certain crystalline silicon photovoltaic products (certain solar products) from the People's Republic of China (the PRC) on June 10, 2014.<sup>1</sup> The Department determines that countervailable subsidies are being provided to producers and exporters of certain solar products from the PRC. For information on the estimated subsidy rates, *see* the "Suspension of Liquidation" section of this notice. The period of investigation (POI) is January 1, 2012, through December 31, 2012.

DATES: EFFECTIVE DATE: (INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.)

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Justin Neuman, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; Phone: (202) 482-3586, or (202) 482-0486, respectively.

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<sup>1</sup> *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014) (*Preliminary Determination*).

## SUPPLEMENTARY INFORMATION:

### Background

The petitioner, SolarWorld Americas, Inc., filed its petition with the Department on December 31, 2013, seeking the imposition of countervailing duties on certain solar products from the PRC and we initiated this investigation on January 29, 2014.<sup>2</sup> The Department published the *Preliminary Determination* on June 10, 2014. On June 9, 2014, the Government of the People's Republic of China submitted a ministerial error allegation regarding aspects of the *Preliminary Determination*. On June 10, 2014, the mandatory company respondents, Changzhou Trina Solar Energy Co., Ltd. and its cross-owned affiliate Trina Solar (Changzhou) Science & Technology Co., Ltd. (Collectively, Trina Solar), and Wuxi Suntech Power Co., Ltd. and its cross-owned affiliates also submitted a ministerial error allegation. On July 31, 2014, we aligned the final determination in this investigation with the final determination in the companion antidumping duty investigation on certain solar products from the PRC.<sup>3</sup> On August 15, 2014, the Department rejected the Government of the People's Republic of China's (the GOC's) June 9, 2014, ministerial error allegation, as well as Trina Solar's and Wuxi Suntech's June 10, 2014, submissions, explaining that their submissions were noncompliant with the Department's procedures for submitting factual information. Trina Solar and Wuxi Suntech each timely resubmitted their ministerial error allegations on August 19, 2014. On August 21, 2014, the Department determined that no ministerial errors exist with respect to Trina Solar's and Wuxi

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<sup>2</sup> See Letter from Petitioner, "Petition for the Imposition of Antidumping and Countervailing Duties: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan," (December 31, 2013) (the petition); *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 79 FR 4667 (January 29, 2014) (Initiation Notice).

<sup>3</sup> See *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 44402 (July 31, 2014).

Suntech's allegations.<sup>4</sup> Between August 20 and September 2, 2014, we conducted verification of the questionnaire responses submitted by the GOC, Trina Solar, and Wuxi Suntech.<sup>5</sup>

On October 3, 2014, in response to interested parties' comments on the scope of this investigation, the Department announced that it was considering the possibility of a scope clarification, described the possible clarification, and provided interested parties with an opportunity to submit comments on the potential clarification.<sup>6</sup>

Between October 16 and October 27, 2014, interested parties submitted case and rebuttal briefs. We did not conduct a hearing in this proceeding, as any requests for a hearing were timely withdrawn. A full discussion of the issues raised by parties for this final determination may be found in the Final Decision Memorandum.<sup>7</sup> The Final Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).<sup>8</sup> ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at

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<sup>4</sup> See Department Memorandum, "Allegations of Ministerial Errors in the Preliminary Determination," (August 21, 2014).

<sup>5</sup> See Department Memoranda, "Verification of the Questionnaire Responses Submitted by Changzhou Trina Solar Entergy Co., Ltd. and its Cross-Owned Companies," (October 2, 2014); "Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China," (October 3, 2014); and "Verification of the Questionnaire Responses Submitted by Wuxi Suntech Power Co., Ltd. and its Cross-Owned Companies," (October 3, 2014).

<sup>6</sup> See Letter to All Interested Parties, "Antidumping and Countervailing Duty Investigations of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and the Antidumping Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from Taiwan: Opportunity to Submit Scope Comments," (October 3, 2014).

<sup>7</sup> See the Department's Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China," dated concurrently with this notice and hereby adopted by this notice (Final Decision Memorandum).

<sup>8</sup> On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (IA ACCESS) to AD and CVD Centralized Electronic Service System (ACCESS). The website location was changed from <http://iaaccess.trade.gov> to <http://access.trade.gov>. The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

<http://enforcement.trade.gov/frn/>. The signed Final Decision Memorandum and the electronic version are identical in content.

### **Scope Comments and Scope Clarification**

As indicated in the “Background” section above, the Department received comments regarding the scope of this investigation from numerous interested parties. The Department summarized these comments and addressed them in the accompanying Final Decision Memorandum.<sup>9</sup> As explained in the Final Decision Memorandum, to facilitate the scope's administrability and enforcement, we have clarified the scope language such that subject merchandise includes all modules, laminates and/or panels assembled in the PRC that contain crystalline silicon photovoltaic cells produced in a customs territory other than the PRC.<sup>10</sup> The scope of the investigation for this final determination is below.

### **Scope of the Investigation**

The merchandise covered by this investigation is modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of this investigation, subject merchandise includes modules, laminates and/or panels assembled in the PRC consisting of crystalline silicon photovoltaic cells produced in a customs territory other than the PRC.

Subject merchandise includes modules, laminates and/or panels assembled in the PRC consisting of crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of

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<sup>9</sup> See Final Decision Memorandum at Comment 1, “Scope Comments and Scope Clarification.”

<sup>10</sup> *Id.*

materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of this investigation are modules, laminates and/or panels assembled in the PRC, consisting of crystalline silicon photovoltaic cells, not exceeding 10,000mm<sup>2</sup> in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells. Where more than one module, laminate and/or panel is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all modules, laminates and/or panels that are integrated into the consumer good. Further, also excluded from the scope of this investigation are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, laminates and/or panels, from the PRC.<sup>11</sup>

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

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<sup>11</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012).

## **Analysis of Subsidy Programs and Comments Received**

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Final Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Final Decision Memorandum, is attached to this notice as an Appendix.

## **Use of Adverse Facts Available**

The Department notes that, in making these findings, we relied, in part, on facts available and, because one or more respondents did not act to the best of their ability to respond to the Department's requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.<sup>12</sup> For further information, *see* the section "Use of Facts Otherwise Available and Adverse Inferences," in the Final Decision Memorandum.

## **Suspension of Liquidation**

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for each company respondent. Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an "all others" rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

In accordance with section 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we apply an "all others" rate, which is normally calculated by weighing the subsidy rates of the individual companies selected as respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all others

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<sup>12</sup> See sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).

rate should exclude zero and *de minimis* rates calculated for the exporters and producers individually investigated. Where the rates for the investigated companies are all zero or *de minimis*, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an all others rate using “any reasonable method.” Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the all others rate by weight averaging the rates of the two individually investigated company respondents, because doing so risks disclosure of proprietary information. Therefore, and consistent with the Department’s practice, for the all others rate, we calculated a simple average of the two company respondents’ rates.<sup>13</sup> We determine the total estimated net countervailable subsidy rates to be:

<b>Company</b>	<b>Subsidy Rate (<i>ad valorem</i>)</b>
Wuxi Suntech Power Co., Ltd.	27.64 percent
Changzhou Trina Solar Energy Co., Ltd.	49.79 percent
All Others	38.72 percent

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from the PRC that were entered or withdrawn from warehouse, for consumption, on or after June 10, the date of publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 8, 2014, but to continue the suspension of liquidation of all entries from June 10, 2014 through October 7, 2014.<sup>14</sup>

<sup>13</sup> See, e.g., *Countervailing Duty Investigation of Chlorinated Isocyanurates From the People’s Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Determination*, 79 FR 10097 (February 24, 2014), unchanged in *Countervailing Duty Investigation of Chlorinated Isocyanurates From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 56560 (September 22, 2014).

<sup>14</sup> See CBP’s Antidumping Duty and Countervailing Duty Message Database, <http://adcvd.cbp.dhs.gov/adcvdweb/>, at Message No. 4283302 (October 10, 2014).

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

### **ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

### **Return or Destruction of Proprietary Information**

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial



protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 15, 2014.

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Paul Piquado,  
Assistant Secretary  
for Enforcement and Compliance.

#### Appendix – Final Decision Memorandum

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X. Recommendation  
Attachment

[FR Doc. 2014-30071 Filed 12/22/2014 at 8:45 am; Publication Date: 12/23/2014]